

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
TRENTON DIVISION

ABIRA MEDICAL LABORATORIES,  
LLC, d/b/a GENESIS DIAGNOSTICS,

*Plaintiff,*

V.

BLUE CROSS AND BLUE SHIELD OF  
MONTANA AND THEIR AFFILIATES,  
ABC COMPANIES 1-100 AND JOHN  
DOES 1-100,

*Defendants.*

[illegible]

C.A. No. \_\_\_\_\_

## **NOTICE OF REMOVAL**

Defendant Health Care Service Corporation, a mutual legal reserve company doing business in Montana as Blue Cross and Blue Shield of Montana (“BCBSMT”), for the purpose only of removing this cause to the United States District Court for the District of New Jersey, states:

1. **State Court Action.** This action was filed on June 20, 2023, in the Superior Court of New Jersey, Mercer County, Law Civil – Civil Part, Cause No. MER-L-001186-23 (the “State Court Action”). Plaintiff seeks to recover payments under an alleged fee schedule for lab testing. [See Complaint ¶¶ 30-32.] Plaintiff asserts claims against BCBSMT for breach of contract, breach of an implied covenant of good faith and fair dealing, fraudulent misrepresentation, negligent misrepresentation, equitable and promissory estoppel, quantum meruit, unjust enrichment, and violations of the New Jersey Consumer Fraud Act.

2. **Diversity of Citizenship.** This action is removable under 28 U.S.C. §§1332, 1441, and 1446 inasmuch as the amount in controversy exceeds \$75,000.00 and is between parties with

diverse citizenship. Plaintiff is a New Jersey limited liability company [Complaint ¶ 1] and, based on information and belief, has one member, who is a citizen of New Jersey. BCBSMT, on the other hand, is an Illinois company, with its principal place of business in Chicago, Illinois. [Ex. A.] Therefore, Plaintiff is a citizen of New Jersey, and BCBSMT is a citizen of Illinois, for removal and diversity purposes. The court can disregard ABC Companies and John Does for purposes of removal. *Balazik v. Cnty. of Dauphin*, 44 F.3d 209, 213, n.4 (3d Cir. 1995). There is complete diversity of citizenship between Plaintiff and BCBSMT at the time of filing suit and at the time of removal. [See Ex. A.] Plaintiff seeks \$64,388.00, trebled under the Consumer Fraud Act of the N.J.S.A, for damages of \$193,164, plus punitive damages. [Complaint ¶ 79; Section 4.] *See Jersey Shore Hair Inc. v. Hartford Ins. Co. of the Midwest*, CV2014250MASTJB, 2021 WL 7907241 at \*1 (D.N.J. June 21, 2021) (a defendant's notice need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold and must be based on a reasonable reading of the Plaintiff's complaint). Moreover, although Plaintiff alleges compensatory damages of \$64,388.00, it also seeks treble damages under the Consumer Fraud Act of the N.J.S.A. [Complaint ¶¶ 71 - 79.] These statutory claims for treble and multiple damages are included when assessing the amount in controversy. *See Estrumil LLC v. Am. Auto. Ins. Co.*, CV 20-15259 (WJM), 2021 WL 2073953 (D.N.J. Feb. 9, 2021) (punitive damages, treble damages, and attorney's fees are all properly considered in connection with the amount in controversy); *See also Suber v. Chrysler Corp.*, 104 F.3d 578 (3d Cir. 1997), *as amended* (Feb. 18, 1997) (the court should include treble damages and attorney's fees when calculating the amount in controversy). This Court therefore has original jurisdiction pursuant to 28 U.S.C. § 1332, and BCBSMT has shown by a preponderance of the evidence that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. *Yocham v. Novartis Pharm. Corp.*, CIV 07-1810 JBS, 2007 WL

2318493 (D.N.J. Aug. 13, 2007) (removal is proper because there is complete diversity of citizenship and it appears from the face of the complaint that the amount in controversy exceeds \$75,000.00).

3. **Removal is Timely.** Removal is timely under 28 U.S.C. § 1446(b) because BCBSMT was served with a copy of the Complaint on August 30, 2023. *See* 28 U.S.C. §1446(b) (“Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons . . . to file the notice of removal.”). [*See Ex. E*]

4. **Removal is Proper.** Based on the foregoing, the Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000.00, exclusive of interests and costs, and this action is between citizens of different states. Therefore, this action may be removed pursuant to 28 U.S.C. § 1441.

5. **State Court Documents Attached.** An index of matters filed in the state court action is attached hereto as Exhibit B - E. These documents constitute the only pleadings, process, or orders filed in the state court or received by BCBSMT.

6. **Notice.** Pursuant to 28 U.S.C. §1446(d), a copy of this Notice of Removal shall be provided to all adverse parties and filed with the clerk of the state court.

7. **Prayer.** Wherefore, BCBSMT respectfully requests that the United States District Court for the District of New Jersey accept this Notice of Removal and that it assumes jurisdiction of this cause and grant such other and further relief as may be necessary.

Dated: September 28, 2023

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT BLUE CROSS  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 28, 2023, a true and correct copy of the foregoing document was served via email on the following:

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/s/ Louis P. DiGiaimo

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